

five or so years, Charles has forced Dorothy to incur great legal expense in a civil case which is about nothing more than some ill-defined minor matters collateral to the disposition of one item of community property in a divorce case. . .”Pet.App. D-31

Petitioner filed a petition for review with the California Supreme Court, which argued that his alleged incompetency during the Dissolution raised due process issues. The petition was denied on April 21, 2004. Petitioner filed no further papers in the state court action.

STATEMENT OF THE CASE

Petitioner’s federal complaint herein seeks modification of the Order in the Dissolution by redacting the hold harmless language; federal review of the state court decisions regarding Petitioner’s claim of incompetency; and an order overturning the sanctions order issued by the California Appellate Court. Petitioner filed motions for a temporary restraining order and preliminary injunction to prevent the California state courts from proceeding on any sanctions orders.

Defendants in the federal lawsuit filed motions to dismiss pursuant to F.R.C.P. Rule 12(b)(6) for failure to state a claim and for lack of subject matter jurisdiction.

At about the time that Defendants filed their motions to dismiss, the district court continued Petitioner's motion for preliminary injunction in order to allow the court to evaluate the issue of subject matter jurisdiction. The court invited all parties to file letter briefs regarding the jurisdictional issues, including the application of the Rooker-Feldman Doctrine.

After oral argument, the district court determined that it did not have subject matter jurisdiction over the claims raised in Petitioner's federal complaint. "Under the Rooker-Feldman Doctrine, a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court. Moreover, it is a forbidden defacto appeal under Rooker-Feldman "when the plaintiff in a federal district court complains of a legal wrong allegedly committed by the state court and seeks relief from the judgment of that court." Pet.App. C-5

The district court also noted that the "domestic relations exception" divested federal courts of the power to issue divorce decrees since domestic relations belong to the laws of the state. Petitioner's federal case arose directly from the Dissolution and sought a re-writing of the family court judgment. Thus application of the exception was appropriate. Pet.App. C-7 The federal action was also improper as against Respondent since

there was no allegation that she was acting under color of state law. Pet.App. C-7-footnote 2. Finally "the allegations in Plaintiff's Complaint implicate the bar of res judicata" based on Petitioner's own admissions. Pet.App. C-7 footnote 2

Defendants' then pending F.R.C.P. 12(b)(6) motions were not ruled upon since they were not yet before the district court.

Petitioner's appeal to the Ninth Circuit Court of Appeals confirmed the propriety of the dismissal and the lack of subject matter jurisdiction. "We conclude that the claims raised by Tittle in his § 1983 action are "inextricably intertwined" with the state court decisions rendered in relation to the Tittles' marriage dissolution proceedings such that the adjudication of the federal claims would undercut those state court rulings. . . Accordingly, the district court properly dismissed the complaint for lack of subject matter jurisdiction. See *Exxon Mobile Corp v. Saudi Basics Indus. Corp.* 125 S. Ct. 1517, 1521-22 (2005)" Pet.App. B-2

ISSUE FOR REVIEW

Petitioner miscasts the issues of review. The federal complaint was dismissed sua sponte by the district court for lack of subject matter jurisdiction. Thus, the only issue is

whether the district court had subject matter jurisdiction and whether the dismissal was appropriate pursuant to, among other basis, the Rooker-Feldman Doctrine. Petitioner's Questions Presented ignore subject matter jurisdiction and merely attempt to re-argue the factual issues presented in the federal complaint; issues which were determined in the two prior state court cases.

Petitioner's Questions Presented also misstate the facts. First, competency during the federal lawsuit was not an issue. Petitioner was represented by counsel in the federal lawsuit and Petitioner declared in at least two affidavits filed in this federal lawsuit, one signed on May 21, 2004 and one signed on March 21, 2005, that he was fully competent. Rather, Petitioner argued that he was incompetent during the prior Dissolution in an attempt to overturn rulings in that Dissolution.

Second the federal complaint was not dismissed pursuant to a F.R.C.P. 12(b)(6) motion for failure to state a claim upon which relief can be granted but was dismissed sua sponte by the court (and after hearing) for lack of subject matter jurisdiction.

Third there was no "admission" of any criminal conduct. In fact there has never been any impropriety on Respondent's behalf regarding any mail or workers compensation checks. In this federal lawsuit, however, Petitioner misrepresented the

activities that had occurred in the Dissolution regarding certain workers compensation funds and had even misrepresented the position that he had taken during the Dissolution. Any comments by Respondent were merely an explanation of the dispute that occurred during the Dissolution concerning the California workers compensation funds, the resolution and stipulation regarding that dispute, and the reason the funds were a non-issue.

REASONS FOR DENYING THE PETITION

There is no reason to grant Petitioner's petition. The district court's dismissal of the federal complaint does not conflict with the decisions of any other court of appeals nor does this case present an important question of federal law that needs to be settled. While this Court has recognized that some federal courts have "at times extended Rooker-Feldman far beyond the contours of the Rooker and Feldman cases," (*Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 at 283, 125, S. Ct. 1517, 161 L.Ed. 2d 454 (2005), the instant case in not one of them. In fact, this case is classically appropriate for the application of the Rooker-Feldman Doctrine and comes squarely within the parameters for the application of the doctrine as set forth in *Exxon Mobile Corp. v. Saudi Basic*

Industries Corp., 544 U.S. 280 125, S. Ct. 1517, 161 L.Ed.2d 454 (2005). Each and every claim raised in Petitioner's federal complaint is an attempt to overturn a ruling or judgment in the Dissolution or the prior state court action.

A. THE APPLICATION OF ROOKER-FELDMAN

The federal district courts are courts of limited jurisdiction. A plaintiff seeking relief from a district court has the burden to prove that jurisdiction exists. (*Thornhill Publishing C., Inc v. General Telephone & Electronics Corp.* 594 F.2d 730, 733 (9th Cir. 1979) In effect it is presumed that a cause of action lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction. *Kokkonen v. Guardian Life Ins. Co.* 511 U.S. 375, 395, 114 S.Ct. 1673, 1675 (1994)

The Rooker-Feldman doctrine recognizes that the federal district courts lack subject matter jurisdiction to review state court judgments and orders. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 68 L.Ed. 362, 44 S.Ct. 149 (1923); *District of Columbia Court of Appeals v. Feldman* 460 U.S. 462, 486-87, 75 L.Ed. 2d 206, 103 S.Ct. 1303 (1983). The United States Supreme Court is vested under 28 U.S.C. §1257 with the jurisdiction over appeals from final state court judgments. That grant of jurisdiction is exclusive. Thus, under what is known as

the Rooker-Feldman Doctrine, the lower federal courts are precluded from exercising appellate jurisdiction over final state court judgments. *Lance v. Dennis* 2006 U.S. Lexis 1105 (2006)

The Rooker-Feldman doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283, 125 S. Ct. 1517, 161 L.Ed.2d 454 (2005).

To the extent that a plaintiff requests the district court to conduct a review of a state court's judgment or to scrutinize the state court's application of rules and procedures, the district court lacks subject matter jurisdiction over the complaint. *Allah v. Superior Court of the State of California*, 871 F.2d 887, 890-91 (9th Cir. 1989) "If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court and seeks relief from a state court judgment based on that decision, Rooker-Feldman bars subject matter jurisdiction in federal district court." *Noel v. Hall*, 341 F.3d 1148, at 1164 (9th Cir. 2003).

District courts have no authority to review final determinations of state court proceedings "even when the challenge to the state court decision involves constitutional

issues.” *Worldwide Church of God v. McNair* 805 F.2d 888, 891 (9th Cir. 1986)). The state courts are as competent as federal courts to decide constitutional issues. *Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986). “[L]ower federal courts possess no power whatever to sit in direct review of state court decisions. This rule applies even though the challenge is anchored to alleged deprivations of federally due process and equal protection rights.” *Id* at 892; *See also District of Columbia Court of Appeals v. Feldman* 460 U.S. 462 at 416, 75 L.Ed. 2d 206, 103 S.Ct. 1303 (1983); *Bianchi v. Rylaarsdam* 334 F.3d 895, 898 (9th Cir. 2003) Thus, the prohibition of the Rooker-Feldman doctrine cannot be avoided simply by “dressing” the claim in a constitutional issue.

The Rooker-Feldman doctrine prevents a losing party in a state court from seeking federal district review of the state judgment if those rights are inextricably intertwined with the state ruling. *Bianchi v. Rylaarsdam* 334 F.3d 895, 898 (9th Cir. 2003) A claim is inextricably intertwined in the state court proceedings if the relief requested would effectively reverse the state court decision or void its ruling. *Bianchi v. Rylaarsdam* 334 F.3d 895, 898 (9th Cir. 2003); *Fielder v. Credit Accept. Corp.* 188 F.3d 1031, 1034 (8th Cir. 1999) Where the district court must hold that the state court was wrong in order to find

for the plaintiff, the issues presented to both courts are inextricably intertwined and federal jurisdiction is lacking. *Doe Associates Law Offices v. Napolitano* 252 F.3d 1026, 1030 (9th Cir. 2001)

In this case, lack of subject matter jurisdiction appears on the face of the federal complaint. *Thornhill Publishing Co., Inc. v. General Telephone & Electronics Corp.* 594 F.2d 730, 733 (9th Cir. 1979) The complaint was brought by a state-court loser who complains of alleged injuries caused by state-court judgments and requests district court review and rejection of those judgments. For example, the federal complaint seeks reversal or modification of the June 18, 1998 Order entered in the Dissolution specifically indicating that Petitioner's prior legal proceedings to overturn the Order (in both the Dissolution and the state court action) had been rejected. Thus, the federal complaint seeks direct review of not only the June 18, 1998 Order but all of the subsequent state court rulings denying Petitioner's many attempts to overturn or modify that Order.

Petitioner's other claims (incompetency, the worker's compensation checks and the sanctions ordered in the state court action) also issue directly from orders or rulings in the Dissolution and the state court action. In fact, every legal proceeding, document, or motion filed by Petitioner against

Respondent since June 18, 1998 was an attempt directly or indirectly to overturn the rulings and judgments in that Dissolution. Thus, the complaint herein is a de facto appeal from the Dissolution and the state court action (which also sought to overturn the rulings in the Dissolution) and is precluded by the Rooker-Feldman.

B. LEAVE TO AMEND

Petitioner's only argument as to subject matter jurisdiction is that he should have been allowed to amend his complaint. Petitioner's argument, however, is based on his misconception that the complaint was dismissed pursuant to a motion for failure to state a claim. Such is not the case.

Unlike mere defects in the form of a pleading, which can be remedied by amendment, subject matter jurisdiction must exist when the complaint is filed. If jurisdiction is lacking, the district court has no power to do anything except dismiss. If jurisdiction is lacking, any order granting leave to amend would be a nullity. *Morongo Band of Mission Indians v. California State Bd. Of Equalization* 858 F.2d 1376, 1381 (9th Cir, 1988). A district court is powerless to grant leave to amend when it lacks jurisdiction over the original complaint. *Id.* at 1381

In this case, all of the claims raised in the federal complaint were an attempt to overturn rulings and judgments in state court

proceedings. Thus, the district court had no jurisdiction and had no power to grant leave to amend. In reality any leave would be futile since the entirety of Petitioner's claims, as asserted for the last eight years, are based solely on the contents of the prior state court cases and nothing more.

C. DOMESTIC RELATIONS EXCEPTION APPLIES

The whole subject of domestic relations belongs to the laws of the states and not to the laws of the United States. *In re Burrus* 136 U.S. 586, 593, 34 L.Ed 500, 10 S.Ct. 850 (1890); *Mansell v. Mansell* 490 U.S. 586, 587, 34 L.Ed.2d 675, 109 S.Ct. 2023 (1989) So strong is the federal courts deference to state law in this area that the courts have recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees. *Ankenbrandt v. Richards* 504 U.S. 689, 703, 119 L.Ed2d 468, 112 S.Ct. 2206 (1992)

In this case, Petitioner seeks to modify or overturn the Order in the Dissolution; an order which distributed the last piece of property and resolved the remaining issues between the parties in the Dissolution. It is the order by which the March 3, 1997 judgment in the Dissolution was finally consummated. Thus, it directly affects the domestic relations of the parties and directly affects the divorce decree issued in that Dissolution.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court deny the Petition.

DATED: March 6, 2006

Respectfully Submitted,

Marc A. Zimmerman

Counsel of Record

Debra A. Dodds

Paul N. Jacobs

Jacobs & Dodds

881 Dover Street, Suite 285

Newport Beach, California

92663

(949) 645-7300

Attorneys for Respondent

Dorothy Bottorff-Tittle

4

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SUPREME COURT, U.S.

**In The
Supreme Court of the United States**

CHARLES J. TITTLE,

Petitioner,

v.

**DOROTHY D. BOTTORFF-TITTLE;
SUPERIOR COURT OF ORANGE COUNTY;
ORANGE COUNTY; STATE OF CALIFORNIA,**

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

**OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

**GLEN A. STEBENS
Counsel of Record
Law Offices
BEAM, BROBECK, WEST, BORGES
& ROSA LLP
600 West Santa Ana Boulevard
Suite 1000
Santa Ana, California 92701
Telephone: (714) 558-3944**

*Attorneys for Respondent
County of Orange*

QUESTION PRESENTED

Does the United States District Court have jurisdiction to review final state court decisions?

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INTRODUCTION

The sole issue raised in Mr. Tittle's Petition for Writ of Certiorari is whether the United States District Court has jurisdiction over final state court decisions. This petition represents Mr. Tittle's continuing effort to overturn decisions originally made in his marital dissolution proceedings heard before the California Superior Court in and for the County of Orange. The three causes of action of petitioner's complaint in the United States District Court attempt to state claims for violation of civil rights and for injunctive relief pursuant to 42 U.S.C. Section 1983. He is attempting to restrain the Orange County Superior Court and Ms. Bottorff-Tittle from proceeding with certain state court actions. Without a hearing, the District Court denied plaintiff's Ex Parte Application for a temporary restraining order. Plaintiff subsequently filed a Motion for Preliminary Injunction. Each of the defendants independently filed Motions to Dismiss plaintiff's Complaint under *Federal Rules of Civil Procedure* Rule 12(b)(6) as well as on the grounds that the District Court lacked subject matter jurisdiction of the Complaint.

While these motions were pending, the District Court invited further briefing of the parties on the issue of whether or not the court had subject matter jurisdiction over the case. A hearing was held in the District Court on June 28, 2004 in which all parties were present and represented by counsel. District Judge Carney, after oral argument by counsel for petitioner, dismissed this case for lack of subject matter jurisdiction pursuant the *Rooker-Feldman* Doctrine.

The Ninth Circuit Court of Appeals summarily affirmed this decision and the panel voted to deny Mr. Tittle's petition for rehearing.

STATEMENT OF THE CASE

I. FACTS

Petitioner's Complaint seeks to have the District Court review and overturn decisions originally made in appellant's marital dissolution action in the Orange County Superior Court. As part of that proceeding, certain property in Arkansas was ordered to be sold and the proceeds divided equally between himself and Ms. Bottorff-Tittle his ex-wife. The original sale did not go through as planned and at an April 1998 Order to Show Cause hearing, a stipulation was entered that plaintiff would purchase the property himself. He then objected to the formal order prepared by opposing counsel with respect to the stipulation. This objection was denied.

Mr. Tittle then filed a separate civil action in the Orange County Superior Court against Ms. Bottorff-Tittle for having backed out of the original deal concerning the Arkansas property. Concurrently therewith he filed a motion to vacate the judgment in the family law court. This motion was denied. Judgment was subsequently entered against him in the civil case by way of granting defendant's motion for summary judgment. He then appealed this judgment to the California Court of Appeal, Fourth District, Division Three. In an unpublished written opinion dated March 2, 2004, this judgment was upheld and the appeal itself deemed frivolous. The case was

returned to the Orange County Superior Court for decision upon the amount of sanctions to be awarded.

The instant Complaint in three causes of action challenges these state court rulings and seeks the District court's review and overturning of those decisions.

II. ISSUES FOR REVIEW

A. Capacity of Mr. Tittle

Mr. Tittle in his Petition for Writ of Certiorari has listed four separate issues for review by this court. The first of these is "Upon learning that federal plaintiff may have a lack of capacity, should the federal district court judge have suspended further proceedings under *Federal Rules of Civil Procedure* Rule 12(b)(6)?"

It should be noted that the issue of Mr. Tittle's capacity or lack thereof to proceed under *Federal Rules of Civil Procedure* Rule 17 was not addressed by the plaintiff in his original Complaint and was not addressed by counsel at the hearing on the court's motion to determine whether or not it had subject jurisdiction over this matter. The question of the capacity of Mr. Tittle raised at the District Court hearing dealt with whether or not the decision of the State Trial Court and Court of Appeal with respect to capacity could raise an issue under 42 U.S.C. Section 1983. The court ruled it could not.

This issue was appropriately addressed and denied by the California Appellate Court in the ruling as attached to the plaintiff's petition here. Whether or not to review this decision of the California Appellate Courts then becomes an issue of subject matter jurisdiction addressed under the *Rooker-Feldman* discussion below.

B. Petitioner's Ability to Amend

Petitioner's second presented question for review was "Before dismissing plaintiff's 1983 civil rights complaint, should the Federal District Court have allowed plaintiff to amend his initial complaint?"

It should first be noted that plaintiff's case was dismissed on the court's own motion for lack of subject matter jurisdiction (*Federal Rules of Civil Procedure* Rule 12(b)(1)). Contrary to petitioner's argument, the case was not dismissed pursuant to *Federal Rules of Civil Procedure* Rule 12(b)(6) for failing to state a cause of action.

It is clear on the face of the Complaint itself as well as the materials contained within exhibits attached to that complaint that the district court lacks subject matter jurisdiction over the claims raised therein. The gist of Mr. Tittle's Complaint was to have reviewed decisions made in the California courts. No matter how the facts were alleged to plead, the relief would still amount to direct review of those state court decisions. It is clear that this defect cannot be cured by allegations of different facts. Therefore, it was appropriate to dismiss the Complaint without allowing plaintiff leave to amend (*Schreiber Distributing Co. v. Serv-Well Furniture Company, Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *Desaigoudar v. Meyer, Cord*, 223 F.3d 1020, 1021 (9th Cir. 2000); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995).)

C. Ninth Circuit Consideration

The plaintiff's third question presented for review is "Before denying plaintiff's appeal, should the Ninth Circuit Court of Appeals also have considered appellee's

attorney's admissions of his client's federal criminal conduct in California State Court proceedings?" This issue is not one brought before the court in the petitioner's Complaint nor properly brought before the court in any manner whatsoever.

D. *Rooker-Feldman* Doctrine

The fourth question presented by petitioner for review was "Should the Ninth Circuit Court of Appeals have considered the California State Court's denial of petitioner's procedural due process rights?" Presumably plaintiff is referring to causes of action he attempts to state under 42 U.S.C. Section 1983. These issues were not appropriately presented to the court as it was determined based upon the face of the Complaint that the District Court lacked subject matter jurisdiction in this matter. Plaintiff's Complaint is a faintly veiled attempt at, once again, overturning the decisions made by the Orange County trial court and Appellate Courts. The District Court appropriately determined under the *Rooker-Feldman* doctrine that it had no jurisdiction to hear those matters. As noted in the recent case of *Lance v. Dennis*, 2006 W.L. 386360, 74 U.S.L.W. 3457:

"The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by 'state-court losers' challenging 'state-court judgments' rendered before the district court proceedings commenced. *Exxon Mobil Corp. v. Saudi Basic Industries, Corp.*, 544 U.S. 280, 234 (2005)."

In *Lance*, this court vacated the lower court opinion concluding the *Rooker-Feldman* doctrine did not bar

plaintiffs from proceeding because they were not in privity to parties in the earlier state court case.

Petitioner in this case seeks review of state court decisions as the matter has been previously determined in family law proceedings, a civil lawsuit and by the California Appellate Courts. As such the District court does not have subject matter jurisdiction to hear this matter.

“We believe the following general formulation describes the distinctive role of the *Rooker-Feldman* doctrine in our Federal System: If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal District court.”

Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003).

“As courts of original jurisdiction . . . [the United States District Courts] do not have jurisdiction over direct challenges to final decisions of state courts, even if those challenges allege that the state court’s action was unconstitutional [citation]. This rule applies even though the direct challenges anchored two alleged deprivations of federally protected due process and equal protection rights. *Feldman* [*D.C. Court of Appeal v. Feldman*, 460 U.S. 462 (1983)], 460 U.S. at 484-486, 103 S.Ct. at 1316-1317; *McNare*, [*Worldwide Church of God v. McNare*, 805 F.2d 888, (9th Cir. 1986)] 805 F.2d at 891. In the present case, *Allah* filed a personal injury action in the Los Angeles Superior Court, which was dismissed by the state court because of his failure to comply with the discovery order. In his petition to the District court, *Allah* argued that the state court

violated his federally protected equal protection and due process rights by dismissing this case on "procedural technicalities," instead of making a final determination on the merits. To the extent that *Allah* requested the district court to conduct a direct review of the state court's judgment and to scrutinize the state court's application of various rules and procedures pertaining to this case, the district court lacks subject matter jurisdiction over his complaint. The proper court in which to obtain direct review of state-court determinations is the United States Supreme Court. 28 U.S.C 1257(3); *McNare*, 805 F.2d at 891, see also *Feldman*, 46 U.S. 486, 103 S.Ct. at 1317." *Allah v. Superior Court* (Doeve), 871 F.2d 887, 890-891 (9th Cir. 1988).

That is precisely the situation that is presented in this case. Petitioner seeks review and overturning of state court decisions by the federal district court. This is inappropriate. A final decision of the state court is properly reviewed by the United States Supreme Court in its original jurisdiction.

REASONS FOR DENYING REVIEW

Supreme Court Rule 10 indicates that "a Petition for Writ of Certiorari will be granted only for compelling reasons." It sets for guidelines for granting review foremost among these is whether there is a conflict between the circuits (*Bunting v. Mellen*, 541 U.S. 1019 (2004)).

"A Petition for a Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of